

STATE BOARD OF EMBALMERS,)
AND FUNERAL DIRECTORS)
)
Petitioner,)
)
v.) Case No.: EMB 12-001-PV
)
MARK BAILEY)
)
Respondent.)

At its regularly schedule meeting on September 28, 2011, at approximately 3:00 p.m. and pursuant to notice described in the Findings of Fact, the State Board of Embalmers and Funeral Directors (Board) took up the probation violation complaint alleging that Mark Bailey (Bailey) had failed to comply with the terms of his probation. The Board convened the hearing at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

The board appeared through Division of Professional Registration Legal Counsel Sharon Euler. Bailey, despite receiving notice as described in the Findings of Fact below, did not appear and was not represented by counsel. Division of Professional Registration Legal Counsel Sarah Ledgerwood served as the board's legal advisor at the September 28, 2011 hearing, during deliberations and in the preparation of this order.

Findings of Fact

1. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo¹, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

2. Bailey is an individual residing at 12705 NW 145th Street, Platte City, Missouri 64079.

3. Bailey holds funeral director license number 004441. This license is current and active.

4. Bailey holds embalmer license number 005979. This license is current and active.

5. The Board and Bailey entered into a "Settlement Agreement Between the Missouri State Board of Embalmers and Funeral Directors and Mark Bailey" which Bailey signed on February 23, 2010 and the Board signed on March 1, 2010 (Settlement Agreement). The Settlement Agreement became effective 15 days after the Board signed it.

6. In the Settlement Agreement, the Board and Bailey agreed that Bailey's funeral director and embalmer licenses were subject to discipline due a plea of guilty on August 8, 2007 to the class C felony of assault in the second

¹ All statutory references are to the Revised Statutes of Missouri (2000), as amended, unless otherwise indicated.

degree for operating a motor vehicle in an intoxicated condition, causing injury to another person and for failing to report the guilty plea to the Board within 30 days of being finally adjudicated as required by regulations 20 CSR 2120-2.020(22) and 20 CSR 2120-2.060(28).

7. In the Settlement Agreement, the Board and Bailey agreed to a disciplinary order. The disciplinary order placed Bailey's funeral director and embalmer licenses on probation for a period of five years subject to compliance with certain terms and conditions of probation. Settlement Agreement Disciplinary Order, Paragraph 21.

8. The terms and conditions of discipline contained in paragraph 21 include:

- a. Bailey and the Executive Director shall submit written reports to the Board by no later than January 1 and July 1 during each year of the Disciplinary Period stating truthfully whether there has been compliance with all terms and conditions of this Settlement Agreement. Settlement Agreement Disciplinary Order, Paragraph 21.H.

9. On August 31, 2011 the Board notified Bailey of the September 28, 2011 probation violation. The Board sent notice of the hearing, including the time, date and location of the hearing, as well as a copy of the Probation Violation Complaint to Bailey at his last known address on file with the Board. The Board sent the notice by certified mail and first class mail. The Board did not receive the

“green card” notifying receipt of the certified mail copy of the notice and complaint back. The Board did not receive the first class mail copy of the notice and complaint back and undeliverable.

10. During the September 28, 2011 hearing, counsel for the Board offered and the Board admitted the following exhibits:

- a. Exhibit 1: PROMO Licensing screen showing licenses
- b. Exhibit 2: Settlement Agreement
- c. Exhibit 3: Notice of Hearing

11. During the September 28, 2011 hearing, the Board heard testimony from the following witnesses on behalf of the Board: Sandy Sebastian, Executive Director.

Conduct Supporting Probation Violations

12. Bailey submitted no written compliance reports due to the Board on or before July 1, 2010, January 1, 2011 or July 1, 2011. To date, Bailey has not submitted the July 1, 2010, January 1, 2011 or July 1, 2011 compliance reports.

Conclusions of Law

13. The Board possesses jurisdiction over this matter pursuant to Section 324.042, RSMo, and pursuant to paragraphs 22, 23 and 26 on pages 10 and 11 of the Settlement Agreement.

14. Section 324.042, RSMo, states:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing.

Violations of Probation

15. As set out in paragraphs 3 through 12 above, Bailey violated paragraph 21.H. of the Settlement Agreement Disciplinary Order by failing to submit his written report to the Board no later than July 1, 2010, January 1, 2011, and July 1, 2011 stating truthfully whether there has been compliance with all terms and conditions of the Settlement Agreement.

Decision and Order

It is the decision of the State Board of Embalmers and Funeral Directors that Mark Bailey violated the terms of the Settlement Agreement Between the Missouri State Board of Embalmers and Funeral Directors and Bailey, and Bailey's funeral director and embalmer licenses are, therefore, subject to further disciplinary action.

The State Board of Embalmers and Funeral Directors orders that the funeral director license (license number 004441) and the embalmer license (license number 005979) of Mark Bailey are hereby **REVOKED**.

Effective the date of this Order, Mark Bailey shall no longer engage in the practice of funeral directing and embalming.

Mark Bailey shall immediately return all indicia of licensure to the State Board of Embalmers and Funeral Directors.

The Board will maintain this Order as an open and public record of the Board as provided in Chapters 333, 436, 610, and 324, RSMo.

Entered this 12th day of October, 2011.

Missouri State Board of Embalmers and Funeral Directors

Sandy Sebastian
Sandy Sebastian, Executive Director